

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CV 08-0479 RB/KBM
CR 04-0852 RB

ALEJANDRO ESPINOZA,

Defendant.


MEMORANDUM OPINION AND ORDER

This matter comes before the Court on Defendant's Motion to Amend or Make Additional Findings and to Alter or Amend Judgment (CV Doc. 127; CR Doc. 201) filed on July 28, 2014. The motion invokes rules 52(b), 59(e) of the Federal Rules of Civil Procedure. Defendant asks the Court to make additional findings or alter or amend its order (CV Doc. 126; CR Doc. 200) entered on July 15, 2014, that dismissed his earlier motion under rule 60(b) of the Federal Rules of Civil Procedure. The Court will deny the motion.

Defendant's motion seeks relief from the Court's order of July 15, 2014, that dismissed his rule 60(b) motion for lack of jurisdiction as a second or successive petition. In that order, the Court quoted a Tenth Circuit rule that, "if the prisoner's pleading must be treated as a second or successive § 2255 motion, the district court does not even have jurisdiction to deny the relief sought in the pleading." *United States v. Nelson*, 465 F.3d 1145, 1148 (10th Cir. 2006). Lacking jurisdiction, the Court had no authority to rule on Defendant's additional allegations in support of his successive claims. Under the rule stated in *Nelson*, the Court will deny Defendant's motion.

IT IS THEREFORE ORDERED that Defendant's Motion to Amend or Make Additional Findings and to Alter or Amend Judgment (CV Doc. 127; CR Doc. 201) filed on July 28, 2014, is

DENIED; and his Request for a Ruling (CV Doc. 129; CR Doc. 203) filed on February 9, 2015, is
DENIED as moot.



UNITED STATES DISTRICT JUDGE